No. 280799

84916-9

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

LESTER RAY JIM, Petitioner.

BRIEF OF PETITIONER

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I. INTRODUCTION

This case presents the issue of whether the State of Washington has subject matter jurisdiction to prosecute the Petitioner, an enrolled member of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"). The Petitioner was cited by agents of the Washington Department of Fish and Wildlife ("WDFW") for violations of state fisheries regulations within an area known as the Maryhill Treaty Fishing Access Site. The State claims that it has criminal jurisdiction under RCW 37.12.010, which was authorized by Congress pursuant to Public Law 280. However, the Supreme Court of Washington has visited this issue before, in the context of a similar Indian treaty "in-lieu" site, and ruled that the State has no such jurisdiction. Because the facts and legal issues are virtually the same in this case, the Court's answer to the question presented should be the same – the State has no jurisdiction. Moreover, language in the relevant statutes indicate that they do not apply to regulation of Indian treaty

fishing rights, and any automatic assumption of criminal jurisdiction over the Petitioner regarding his treaty fishing activities is therefore not authorized.

II. ASSIGNMENT OF ERROR

The Superior Court for Klickitat County erred in entering its order of April 1, 2009, which: 1) reversed a decision by the District Court of Klickitat County granting the petitioner's motion to dismiss for lack of jurisdiction, and 2) remanded the case to the District Court for further proceedings.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Does the State of Washington have authority, pursuant to RCW § 37.12.010, to assume criminal jurisdiction over the Petitioner, an enrolled member of the Yakama Nation, in connection with his exercise of Indian treaty fishing rights within the Maryhill Treaty Fishing Access Site?

III. STATEMENT OF THE CASE

A. TREATY FISHING ACCESS SITES

In 1938, construction of Bonneville Dam was completed on the Columbia River. The filling of the Bonneville pool resulted in the inundation of countless usual and accustomed fishing places reserved by treaties signed by the United States and four federally recognized Indian tribes in 1855. S. Rep. No. 577, 100th Cong., 2nd Sess., 43, *reprinted in* 1988 U.S.C.C.A.N., Vol. 6, 3908; Appendix A-10. In 1939, an agreement was reached between the U.S. Department of War and three of the tribes wherein the Army Corps of Engineers would acquire over 400 acres of land and develop them as "in-lieu" fishing sites, to be ultimately administered by the Bureau of Indian Affairs ("BIA") for the "permanent use and enjoyment" of the tribes.[1] *Id.*

[1] The tribes are the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

This agreement was ratified and enacted by Congress as one of many appropriations provisions in § 2 of the River and Harbor Act of 1945. Pub. L. No. 79-14, § 2, 59 Stat. 22. The legislation specified that the sites "shall be subject to the same conditions, safeguards, and protections as the treaty fishing grounds submerged or destroyed." *Id.;* see also *Sohappy v. Hodel,* 911 F.2d 1312, 1317 (9th Cir. 1990). An initial amount of $50,000.00 was authorized for the project, but this budget was eventually raised to $185,000.00. Pub. L. No. 84-62, 69 Stat. 85 (1955). Five "in-lieu" sites totaling 40 acres were acquired by the Corps with these funds. S. Rep. No. 577 at 44; Appendix A-10. These sites are Little White Salmon (also known as Cooks Landing), Big White Salmon (also known as Underwood) and Wind River in Washington, and Cascade Locks and Lone Pine in Oregon. In 1967 the BIA promulgated regulations governing use of the five sites, which restricted access to enrolled members of the Yakama Nation, the Umatilla Tribe, the Warm Springs Tribe, and "such other

Columbia River Indians, if any, who had treaty fishing rights at locations inundated or destroyed by Bonneville Dam." 25 CFR § 248.2; 32 Fed. Reg. 3945.

After 1945 two more dams were completed on the Columbia River, The Dalles in 1957 and John Day in 1971; construction and operation of these dams resulted in more losses of treaty fishing sites and Indian villages on the River. S. Rep. No. 577 at 44; Appendix A-11. In another settlement with the tribes in 1972 (this one from a lawsuit filed by the Umatilla Tribe), the United States agreed to recommend to Congress legislation authorizing the Corps to acquire more lands for additional fishing sites. *Id.* Although a bill was forwarded to Congress in 1974, no action was taken, and many years passed without any legislation. *Id.*

In 1988 Congress finally enacted Title IV of Public Law 100-581. 102 Stat. 2944; Appendix B. The Senate Select Committee on Indian Affairs described its primary purpose as follows:

> Title IV of H.R. 2677 provides a vehicle for the United States to satisfy its commitment to the Indian tribes which exercise fishing rights on the Columbia River and whose traditional fishing places were inundated by flooding caused from the construction of the Bonneville Dam. The provision designates certain sites and authorizes the acquisition of additional sites from willing sellers to allow more and better access to the river for Indian and non-Indian fishermen, to ease tensions between the Indian and non-Indian fishermen and to ease overcrowding of access sites by fishermen and recreationists along the Columbia River.

S. Rep. No. 577 at 22; Appendix A-3. Title IV was substantially similar to the 1945 act, yet provided far more detail. The statute authorized the Corps to improve certain federally owned lands adjacent to the Columbia River (identified on a map) "to provide access to usual and accustomed fishing areas and ancillary fishing facilities" for members of the tribes, which now included the Nez Perce Tribe as well as the Yakamas, Umatillas, and Warm Springs. Pub. L. No. 100-581, § 401(a), 102 Stat. 2944 (1988); Appendix B-1. Congress also directed the Corps to acquire at least six more sites adjacent to the Bonneville pool. *Id.*, §

401(b)(1). Like the previous "in-lieu" legislation, the 1988 statute authorized the Corps to improve and maintain the fishing sites and then transfer them to the Department of the Interior to be held in trust for the benefit of the tribes. *Id.*, § 401(b)(2). The existing in-lieu sites also were slated for improvements. *Id.*, § 401(b)(3). Although the costs of the improvements were to be treated as normal "project costs" of the Corps' Portland District, Congress did appropriate $2 million for land acquisition. *Id.*, § 401(d).

In addition, the final section of Title IV contained a provision that reads as follows:

> Nothing in this Act shall be construed as repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or Executive order pertaining to any Indian tribe, band, or community.

Id., § 401(f). The Senate Report for the bill that became Title IV explained that this subsection in part "provides that this Section does not affect the legal status of the existing in-lieu sites and further assumes that the legal status of the newly

provided in-lieu sites will be entirely consistent with those of existing sites." S. Rep. No. 577 at 31; Appendix A-8. These new sites became known as "Treaty Fishing Access Sites" ("TFAS"). Twenty-three TFAS were designated by the Corps of Engineers. Appendix A-13. Subsequent technical amendments to Title IV clarified the location of the Treaty Fishing Access Sites, including the Maryhill TFAS. Pub. L. No. 104-303, § 512, 110 Stat. 3762 (1996); Appendix C.

In 1997, the Bureau of Indian Affairs promulgated regulations regarding use of the TFAS, restricting such use to enrolled members of the four treaty tribes designated in the statute, including the Yakama Nation. 25 CFR § 247.2(b); 25 CFR § 247.3; 62 Fed. Reg. 50868. Under these regulations the Treaty Fishing Access Sites are under the direct control of the Portland Area Director of the Bureau of Indian Affairs (now the Northwest Area Director). 25 CFR § 247.2(c). The supplementary information to the final rule in the Federal Register states that "the Bureau agreed that the States do not

have regulatory jurisdiction or authority over the in-lieu fishing sites." 62 Fed. Reg. 50867. However, the regulations do permit state officials to check tribal fishermen for tribal enrollment cards only. 25 CFR § 247.4(b).

B. PUBLIC LAW 280

On August 15, 1953, Congress enacted Public Law 280, which granted criminal jurisdiction "over offenses committed by or against Indians in the areas of Indian country" to five states.[2] Pub. L. No. 83-280, § 2 (a), 67 Stat. 588 (1953); Appendix D-1; 18 U.S.C. § 1162(a). The main purpose of the statute was to address the perceived problem of lawlessness on Indian reservations by ceding federal control over public safety to the states. H.R. Rep. No. 848, 83rd Cong., 1st Sess., 3, *reprinted in* 1953 U.S.C.C.A.N. 2409, 2411; see also *Bryan v. Itasca,* 426 U.S. 373, 379, 96 S.Ct. 2102, 2106, 48 L.Ed.2d

[2] The statute also granted to the states jurisdiction over civil causes of action arising in Indian country to which Indians are parties. Pub. L. No. 83-280, § 4 (a), 67 Stat. 588; 28 U.S.C. § 1360(a).

710, 715 (1976). Within the five "mandatory" states, the legislation expressly made inapplicable the federal criminal jurisdiction that had previously existed in Indian country under the General Crimes Act (18 U.S.C. § 1152) and the Major Crimes Act (18 U.S.C. § 1153). Pub. L. No. 83-280, § 2(c); *as amended* 18 U.S.C. § 1162(c); Appendix D-2. Although the State of Oregon was included as a "mandatory" P.L. 280 state, the statute exempted the Warm Springs Reservation because of opposition from the tribal government there. H.R. Rep. No. 848 at 5, 1953 U.S.C.C.A.N. at 2413; 18 U.S.C. § 1162(a); see also *Anderson v. Gladden,* 293 F.2d 463, 466 (9th Cir. 1961), *cert. denied,* 368 U.S. 949 (1961).

In addition to the five original states, P. L. 280 also authorized other states to assume criminal jurisdiction over Indian country if they chose to do so. Pub. L. No. 83-280, §§ 6-7; Appendix D-3. Section 6 spelled out procedures for states to amend their constitutions or existing statutes to assume criminal jurisdiction over Indian country. *Id.* Section

7 permitted states to "assume jurisdiction at such time and in such manner" as they choose. *Id.* These provisions together have been interpreted as permitting states to assume only "partial" criminal jurisdiction over Indian country within their borders as long as they do so in conformity with state laws and procedures. *Washington, et. al. v. Confederated Bands and Tribes of the Yakima Indian Nation,* 439 U.S. 463, 484-499, 99 S.Ct. 740, 753-760, 58 L.Ed.2d 740, 758-767(1979). In 1968 Congress repealed § 7 pursuant to Title IV of the Indian Civil Rights Act (ICRA), supplanting it with a provision requiring the consent of respective Indian tribes before a state may assume criminal jurisdiction in Indian country. Pub. L. No. 90-284, § 401(a), 82 Stat. 78 (1968) (codified at 25 U.S.C. § 1321(a)), § 403(a), 82 Stat. 79.[3]

Before passage of ICRA, and in contrast with Oregon, the State of Washington became a "partial P.L. 280" state. In

[3] The enactment of Public Law 280 and its amendments is discussed in Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians,* 22 U.C.L.A. L. Rev. 535 (1975).

1963 the Washington Legislature enacted Chapter 36, which is codified at RCW 37.12.010. The text of the statute reads in relevant part as follows:

> The State of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:
>
> (1) Compulsory school attendance;
> (2) Public assistance;
> (3) Domestic relations;
> (4) Mental illness;
> (5) Juvenile delinquency;
> (6) Adoption proceedings;
> (7) Dependent children; and
> (8) Operation of motor vehicles upon the public streets, alleys, roads, and highways....

Laws of 1963, ch. 36, § 1; RCW 37.12.010. The statute amended a previous enactment from 1957, which had authorized full P.L. 280 jurisdiction only if an Indian tribe

petitioned the governor to do so; the 1963 act kept this provision (codified as RCW 37.12.021). Laws of 1957, ch. 240, § 2; Laws of 1963, ch. 36, § 5.

Three years later, the U.S. Court of Appeals for the Ninth Circuit, on petition for rehearing, held that the provisions of RCW 37.12 were validly enacted pursuant to federal law. *Quinault Tribe of Indians v. Gallagher,* 368 F.2d 648, 657 (9th Cir. 1966), *cert. denied,* 387 U.S. 907 (1967). In 1979, the U.S. Supreme Court held likewise, ruling that by assuming only "partial" criminal jurisdiction over Indian country, "Washington has done no more than refrain from exercising the full measure of allowable jurisdiction without consent of the tribe affected." *Yakima Indian Nation,* 439 U.S. at 495, 99 S.Ct. at 758, 58 L.Ed.2d at 764. To date the Yakama Nation has never consented to full P.L. 280 jurisdiction.[4]

[4] A brief history of the Yakama Nation's opposition to both P.L. 280 and RCW 37.12 is contained in *Public Law 280: the Status of State Legal Jurisdiction Over Indians After Washington v. Confederated Bands and Tribes of the Yakima Indian Nation,* 15 Gonzaga Law Rev. 133, 149-161 (1980).

In addition, both the 1957 and 1963 state statutes contained the following qualifying language:

> Nothing in this Chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights and tidelands, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto... or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Laws of 1957, ch. 240, § 6; Laws of 1963, ch. 36, § 4; RCW 37.12.060 (entitled "Chapter limited in application"). The wording of this provision is substantially similar to language included by Congress in the text of P.L. 280. Pub. L. No. 83-280, § 2(b); Appendix D-1; 18 U.S.C. § 1162(b); see also *Menominee Tribe of Indians v. United States,* 391 U.S. 404, 410-411, 88 S.Ct. 1705, 1710, 20 L.Ed.2d 697, 702 (1968).

C. PROCEDURE IN THE COURT BELOW

The following facts are not disputed by the State. The Maryhill TFAS is located within Klickitat County. On June 25, 2008, Petitioner, an enrolled member of the Yakama Nation, was conducting Indian treaty commercial fishing on the Columbia River. After Petitioner landed his boat at the Maryhill TFAS, he was approached by officers of the WDFW. The officers cited the Petitioner for unlawful use of a net to take fish in the second degree under RCW 77.15.580. CP 11.

The District Court of Klickitat County orally dismissed the citation for lack of jurisdiction on October 21, 2008. CP 10. On appeal by the State, the Superior Court issued a written opinion on April 1, 2009, reversing the District Court and remanding for further proceedings. CP 46-51.

IV. SUMMARY OF ARGUMENT

The court below based its opinion on the Washington Supreme Court's holding in *State v. Cooper*, concluding that

the State has criminal jurisdiction pursuant to RCW 37.12.010 to cite the defendant for violations of the State's fisheries code within the Maryhill Treaty Fishing Access Site because it is not an "Indian reservation" for purposes of the statute. However, the court's reliance on *Cooper* is misplaced because the facts of the instant case more closely resemble those in the Supreme Court's decision in *State v. Sohappy,* which held that the Cooks Landing "in-lieu" fishing site was indeed an "Indian reservation." Under the principle of *stare decisis, Sohappy* controls. The Maryhill site's status as a congressionally authorized treaty fishing area precludes state criminal jurisdiction over the defendant.

In addition, Congress in enacting Public Law 280 did not authorize criminal jurisdiction by the State over exercise of treaty fishing rights within a TFAS. Both P.L. 280 and RCW 37.12.060 state that nothing in the statutes shall deprive any Indian or Indian tribe of any right afforded under federal treaty with respect to fishing or regulation thereof. Under the canons

of construction regarding Indian statutes this language should be construed as exempting any regulation of Indian treaty fishing from the State's criminal jurisdiction under RCW 37.12.010. The Court should therefore reverse the decision of the court below and remand this case for an order affirming the trial court's dismissal.

V. ARGUMENT

A. *STATE V. COOPER* DOES NOT CONTROL THIS CASE BECAUSE THE MARYHILL TREATY FISHING ACCESS SITE HAS THE SAME LEGAL STATUS AS THE IN-LIEU FISHING SITE THAT THE SUPREME COURT HELD IS AN "INDIAN RESERVATION" UNDER RCW 37.12.010.

This Court has held that the State has criminal jurisdiction over all Indians on deeded fee lands within the boundaries of an Indian reservation. *State v. Flett,* 40 Wash.App. 277, 283, 699 P.2d 774, 778 (1985). Conversely, State assumption of such jurisdiction does "not apply to Indians when on their tribal lands or allotted lands within an established

Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States." RCW 37.12.010. Crimes by Indians on allotted lands held in trust by the United States which are not "within an established Indian reservation" are subject to state criminal jurisdiction under the statute. *State v. Cooper,* 130 Wn.2d 770, 776, 928 P.2d 406, 409 (1996). The Supreme Court of Washington has also held that RCW 37.12.010 does not apply to a federally controlled "in-lieu" fishing site on the Columbia River because it is "within an Indian reservation." *State v. Sohappy,* 110 Wn.2d 907, 911, 757 P.2d 509, 511 (1988).

The *Sohappy* court based its decision on a ruling by the Ninth Circuit Court of Appeals that the same site, Cooks Landing, was an "Indian reservation" for purposes of federal prosecution under the Lacey Act.[5] *United States v. Sohappy,* 770 F.2d 816, 823 (9th Cir. 1985), *cert. denied,* 477 U.S. 906 (1986); 18 U.S.C. § 1151(a). The Ninth Circuit court relied on

[5] The Cooks Landing in-lieu site is formally named "Little White Salmon."

a U.S. Supreme Court decision defining an "Indian reservation" as land that "had been validly set apart for the use of the Indians as such, under the superintendence of the Government." *United States v. Pelican,* 232 U.S. 442, 449, 34 S.Ct. 396, 399, 58 L.Ed. 676, 679 (1914). Finding the federal cases "persuasive," the court in *State v. Sohappy* determined that, although the Cooks Landing site was not part of the Yakama Reservation under the treaty of 1855, "it is part of a reservation for purposes of application of our state jurisdiction statute." *Sohappy,* 110 Wn.2d at 911, 757 P.2d at 511-512.

Despite this precedent, the court below ruled that the Maryhill TFAS (where the Petitioner was cited by WDFW) was not "within a reservation" for purposes of RCW 37.12.010, relying on *State v. Cooper.* CP 51. Gleaning from the *Cooper* court that "the *Sohappy* decision applies only to the Cooks Landing site and does not apply to other off reservation fishing sites held in trust by the United States," the court below concluded that "*Cooper* held that such off reservation sites are

subject to the State's criminal jurisdiction." *Id.* Because the Maryhill fishing site is "not within the boundary of the Yakama reservation," the court's opinion determines that "the State does have jurisdiction over Mr. Jim for the purpose of prosecuting him under Washington law." *Id.*

Examination of *Cooper* reveals that the case is vastly dissimilar to the facts of this case as well as *State v. Sohappy,* and it cannot be read to extend criminal jurisdiction to congressionally designated treaty fishing access sites. In *Cooper* a Nooksack Indian was prosecuted under state law for child molestation on a trust allotment that was not part of any congressionally established Indian off-reservation fishing site. *Cooper,* 130 Wn.2d at 772, 928 P.2d at 407. Unlike *Sohappy,* the land in question in *Cooper* was not subject to exclusive use by Indian tribes for a particular purpose mandated by Congress and reserved by treaties. In citing *Sohappy,* the *Cooper* court was merely distinguishing the facts of the two cases, stating that "*Sohappy* does not, as Cooper suggests, hold that 'reservation'

includes all lands held in trust for the benefit of Indians." *Id,* 130 Wn.2d at 778, 928 P.2d at 409-410. *Cooper* did not reach a result contrary to *Sohappy*. *Cooper* notes that the *Sohappy* decision was "clearly limited to the in-lieu fishing site in question," not trust lands in general. *Id.* The *Cooper* court nowhere holds that the state somehow has criminal jurisdiction over other congressionally established and federally owned and controlled off-reservation Indian treaty fishing sites, including the Maryhill TFAS. *Id.* The court was merely pointing out that the allotment in *Cooper* was not an in-lieu fishing site, and the facts were therefore inapposite. Language used by the Washington Supreme Court must always be appraised in light of the facts of the particular case and the specific issues involved. *Johnson v. Ottomeier,* 45 Wn.2d 419, 421, 275 P.2d 723, 724 (1954).

In contrast to the facts of *Cooper*, the congressional authorization for the Treaty Fishing Access Sites clearly shows that the Maryhill TFAS is factually and legally

indistinguishable from the facts of *Sohappy*. The Maryhill TFAS must be considered an "Indian reservation" for purposes of RCW 37.12.010. Like the original "in-lieu" sites, the Maryhill site and other TFAS were established through congressional legislation which had as its purpose the provision of fishing places for Indian tribes "whose traditional fishing places were inundated by flooding caused from the construction of the Bonneville Dam." S. Rep. No. 577 at 22, Appendix A-3. Significantly, the statute specifically states that "nothing in this Act shall be construed as repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or Executive order pertaining to any Indian tribe, band, or community." Pub. L. No. 100-581, Title IV, § 401(f); Appendix B-1. The Senate Report accompanying the act explains that this provision "assumes that the legal status of the newly provided in-lieu sites will be entirely consistent with those of existing sites." S. Rep. No. 577 at 31, Appendix

A-8. In other words, Congress intended that the Maryhill site should have the same legal status as the fishing site at issue in *State v. Sohappy.*

Like Cooks Landing, Maryhill and other TFAS are also owned and controlled exclusively by the United States in trust through the Bureau of Indian Affairs, and non-Indians are not allowed access. 25 CFR § 247.3. The BIA's final rule in 1997 was accompanied by a statement from the agency that "the States do not have regulatory jurisdiction or authority over the in-lieu fishing sites," including the TFAS. 62 Fed. Reg. 50867. State officials are only permitted to check tribal fishermen for enrollment cards to ensure that non-Indians are not using the site. 25 CFR § 247.4(b).

Although the State may argue that both *State v. Sohappy* and *Cooper* intended "reservation" status to only apply to Cook's Landing and no other federal treaty fishing sites, such a position makes absolutely no sense and must fail. When *Sohappy* stated that "our holding is narrowly limited to

the in-lieu site here involved," the court could not possibly have meant that it would not apply to the two other in-lieu sites that already existed in Washington at that time (Wind River and Underwood).[6] *State v. Sohappy,* 110 Wn.2d at 909, 757 P.2d at 510. In addition, any further such sites established by Congress for the same purpose would presumably be subject to the court's holding. Under the doctrine of *stare decisis,* a rule laid down in any particular case is applicable to other cases involving identical or substantially similar facts. *Floyd v. Department of Labor and Industries,* 44 Wn.2d 560, 565, 269 P.2d 563, 566 (1954). Moreover, Congress made quite clear in 1988 that the Treaty Fishing Access Sites are to be treated no differently than those in-lieu sites authorized in 1945. S. Rep. No. 577 at 31, Appendix A-8. As a result, the Maryhill fishing site should also be considered "reservation

[6] The court may not have been aware that there were other in-lieu sites established by the 1945 statute, since they were not specifically named in the act. Pub. L. No. 79-14, § 2, 59 Stat. 22.

land" exempt from state criminal jurisdiction under RCW 37.12.010.

The State may also argue that because the Maryhill TFAS was set aside for a number of treaty tribes, it is therefore not part of any specific tribe's "reservation," relying on a decision by the Court of Appeals of Oregon regarding the Celilo Village TFAS. See *State v. Jim,* 178 Or.App. 553, 559, 37 P.3d 241, 243 (2002). Aside from the fact that this Court is certainly not bound by *Jim*, the facts and law in the Oregon *Jim* case are also readily distinguishable.

Unlike Washington's "partial" assumption of jurisdiction pursuant to P.L. 280, Oregon is a "mandatory" P.L. 280 state. The only geographic exception to Oregon's assumption of full criminal and civil jurisdiction is the Warm Springs Reservation. Pub. L. No. 83-280, § 2 (a); 18 U.S.C. § 1162(a); Appendix D-1. The court in *Jim* held that because Celilo Village was not within the boundaries of the Warm Springs Reservation as ratified by Congress, it did not fall

within the specific geographic exception unique to Oregon. *Jim,* 178 Or.App. at 559, 37 P.2d at 243. In contrast, under Washington's "partial" P.L. 280 jurisdiction, the legislature chose to exempt all trust and restricted lands within any "Indian reservation." RCW 37.12.010. Under the Washington Supreme Court's precedent, the term "Indian reservation" includes all the in-lieu fishing sites, and should also include the factually indistinguishable TFAS such as Maryhill, where the Petitioner was cited by WDFW in this case. *State v. Sohappy,* 110 Wn.2d at 911, 757 P.2d at 511.

Nevertheless, the State has taken the position that under the U.S. Supreme Court's decision in *Nevada v. Hicks,* the State has a right to take enforcement action on trust lands within Indian reservations for violations of state law off the reservation. See *Nevada v. Hicks,* 533 U.S. 353, 363-364, 121 S.Ct. 2304, 2312, 150 L.Ed.2d 398, 410 (2001). *Hicks* is distinguishable from this case because the Nevada state game wardens in that case actually obtained search warrants from a

tribal court before taking action, and were accompanied by tribal police on the reservation trust land in question. *Id.,* 533 U.S. at 356, 121 S.Ct. at 2308, 150 L.Ed.2d at 405. In the Petitioner's case the WDFW officers did not obtain such a warrant, and were simply waiting at the Maryhill TFAS for the Petitioner to land his boat so that they could incidentally inspect it. This type of enforcement presumes that the State has criminal jurisdiction over Indian fishermen within a reservation even before there is evidence of any violation; there is no legal authority from *Hicks* that says that this broad assumption of state jurisdiction is lawful.

Based on the facts and legal background of this case, which virtually match those of *State v. Sohappy,* the Court should rule that *Cooper* is not controlling authority. As a result, the Court should hold that the Maryhill Treaty Fishing Access Site is trust land "within an Indian reservation" for purposes of RCW 37.12.010, following *Sohappy.*

B. REGULATION OF INDIAN TREATY FISHING IS EXEMPT FROM THE STATE'S ASSUMPTION OF CRIMINAL JURISDICTION UNDER RCW 37.12.060

Even assuming *arguendo* that the Maryhill Site is not "within an Indian reservation," Congress has not authorized the State of Washington to assume any criminal jurisdiction over exercise of Indian fishing rights. Both P. L. 280 and the state statute that followed specifically state that nothing in the statute "shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof." RCW 37.12.060; 18 U.S.C. § 1162(b); see also *Menominee Tribe,* 391 U.S. at 410, 88 S.Ct. at 1710, 20 L.Ed.2d at 702. Wholly aside from the question of whether the Maryhill site is "within an Indian reservation," the State simply cannot by its own statute assume criminal jurisdiction to enforce state fishing laws against enrolled Yakama members exercising their treaty fishing rights. The reference to

regulation of treaty fishing rights in both 18 U.S.C. § 1162(b) and RCW 37.12.060 should be interpreted to mean, *inter alia,* that the Yakama Nation's exclusive right to regulate fishing by its own enrolled members at all treaty fishing sites is not abrogated or diminished by enactment of RCW 37.12.060. See *Settler v. Lameer,* 507 F.2d 231, 237 (9th Cir. 1974) (by treaty "the Yakima Indian Nation retained regulatory and enforcement power with respect to tribal fishing at all 'usual and accustomed places' off the reservation"). The Bureau of Indian Affairs in promulgating its regulations governing the TFAS has accepted this position as well. 62 Fed. Reg. 50867 ("the States do not have regulatory jurisdiction or authority over the in-lieu fishing sites").

Although the State has authority under federal case law to regulate Indian treaty fishing "in the interest of conservation," this power was not automatically granted by Congress through P.L. 280. See *State v. Reed,* 92 Wn.2d 271, 276, 595 P.2d 916, 919, *cert. denied,* 444 U.S. 930 (1979);

Puyallup Tribe v. Department of Game of Washington, 391 U.S. 392, 399, 88 S.Ct. 1725, 1729, 20 L.Ed.2d 689, 694 (1968). Congress is presumed to have been aware of treaty fishing rights law at the time it enacted P.L. 280. See *Tulee v. State of Washington,* 315 U.S. 681, 684, 62 S.Ct. 862, 864, 86 L.Ed. 1115, 1120 (1942). The State took the position in the court below that this "conservation necessity" standard only goes to the merits of the case and is not a jurisdictional issue.

Consequently, in order to argue that it has subject matter jurisdiction in this case, the State must show that the language of RCW 37.12.060 does not actually mean what it plainly says – that criminal jurisdiction conferred by Congress on the State of Washington "shall [not] deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof." This it cannot do. The state cannot show that placing its officers at the Maryhill TFAS is consistent with

the federal authorization and purpose for which such site (like Cooks Landing) is held in trust by the United States for exclusive use of Indians.

Even if the Court concludes that the statutory language regarding treaty fishing in RCW 37.12.060 is ambiguous, such terms must "be construed liberally, doubtful expressions being resolved in favor of the Indians." *Bryan,* 426 U.S. at 392, 96 S.Ct. at 2112, 48 L.Ed.2d at 723. This principle holds particular force when applied to issues involving treaties and associated Indian fishing rights. *Tulee,* 315 U.S. at 684, 62 S.Ct. at 864, 86 L.Ed. at 1120 ("we must not give the treaty the narrowest construction it will bear"). To interpret this provision as permitting State criminal jurisdiction over Indian fishing also risks rendering it superfluous or void, which is generally disfavored in statutory construction. *Cox v. Helenius,* 103 Wn.2d 383, 387, 693 P.2d 683, 686 (1985) ("no part should be deemed inoperative or superfluous unless the result of obvious mistake or error").

Congress has expressed its intent that the State may not assume criminal jurisdiction over Indians if it interferes with tribal regulation of fishing rights protected by treaty, and the Washington Legislature has followed suit. As a result, assumption of criminal jurisdiction by the State of Washington over the Petitioner to enforce RCW 77.15.580 within the Maryhill TFAS has no legal authority under RCW 37.12.010. The courts below thereby lack subject matter jurisdiction to entertain the State's prosecution of the Petitioner in this case.

VI. CONCLUSION

The Court should reverse the decision of the court below for the reasons indicated in Part V, and remand the case for an order affirming the trial court's decision dismissing this case.

DATED this 25th day of September, 2009.

Respectfully submitted,

TOM ZEILMAN, WSBA #28470
Attorney for Petitioner

APPENDIX A

REVIEW OF TRIBAL CONSTITUTIONS AND BYLAWS

P.L. 100-581, see page 102 Stat. 2938

DATES OF CONSIDERATION AND PASSAGE

House: December 7, 1987; October 6, 1988

Senate: October 1, 1988

House Report (Interior and Insular Affairs Committee) No. 100-453, Nov. 20, 1987 [To accompany H.R. 2677]

Senate Report (Indian Affairs Committee) No. 100-577, Sept. 30, 1988 [To accompany H.R. 2677]

Cong. Record Vol. 133 (1987)

Cong. Record Vol. 134 (1988)

The Senate Report is set out below.

SENATE REPORT NO. 100-577

[page 1]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 2677) to amend an Act to establish procedures for review of Tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987), having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

Title I of H.R. 2677 amends the Indian Reorganization Act of June 18, 1934 to provide guidelines for the Secretarial approval of tribal constitutions submitted under Section 16 of the Act. Title II of the Committee's substitute bill includes a number of amendments to other existing laws affecting Indians. Title III will remedy an error made by the U.S. Department of the Interior in 1946, which resultod in 560 acres of trust land being alienated from an enrolled member of the Blackfeet Tribe of Montana, without his knowledge or consent; and Title IV provides for increased access to usual and accustomed fishing sites for Columbia River treaty fishing tribes.

BACKGROUND

Title I of the bill amends Section 16 of the Indian Reorganization Act of 1934. Section 16 gives tribes the option to reorganize their tribal governments by adopting new tribal constitutions. Under the Act, such constitutions—

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1988, has committed to sell the 280 acres in question to Mrs. Munoz for the sum of $79,475.38, plus accrued interest at 10 percent per annum from July 8, 1987, assuming there is no redemption by third parties whereby Hancock does not acquire title to the premises. This sale would carry no title insurance with it and would be subject to the 1987 and 1988 taxes, if any.

Communications received by this Committee from the Department of the Interior and the Department of Justice expressing the views of the Administration are set forth in the section of this report reserved for Executive Communications. Other important communications or documents are set forth below.

Consolidated agreed facts.—On August 21, 1986, the following statement of "Consolidated Agreed Facts" was filed with the United States District Court for the District of Montana in the case of *Renville* v. *The Blackfeet Tribe, et al.*, No. CV-84-041-GF.

* * * * *

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* * * * *

Title IV of H.R. 2677 was added by the Committee in markup. Offered by Senator Evans, it provides for the administrative transfer of Federal lands at certain sites along the Columbia River to the Department of the Interior for the use of Indian treaty fishermen to attain an equitable satisfaction of the United States' commitment to provide lands for Indian treaty fishing in lieu of those inundated by flooding caused by the contruction of the Bonneville Dam.

In the 1850's the Indians of the Northwest ceded title to certain lands in the Columbia River basin in exchange for a commitment by the United States to protect and preserve the rights which the Indians reserved to fish the Columbia River in their usual and accustomed fishing areas. The United States Supreme Court has since ruled that the Indians' right to fish in their usual and accustomed fishing areas includes the right to free and unencumbered access to those sites. *United States* v. *Winans,* 198 U.S. 371 (1905).

In the 1930's the United States constructed the Bonneville Dam on the Columbia River which caused the inundation of approximately 40 of the Indians' traditional fishing sites and severely restricted access to much of the river. In 1939 a settlement agreement between the treaty Indians and the United States provided that the United States would provide more than 400 acres of lands at six described sites along the Columbia in lieu of those sites inundated. To date, the United States has provided five sites totaling approximately 40 acres. These sites are currently referred to as "in-lieu" sites. Subsequently, more dams were built on the Columbia, including Dalles, John Day, and McNary, causing the inundation of more fishing areas.

In 1973, as a result of litigation initiated by treaty tribes after the United States proposed a project to alter the water levels of the pools behind the dams, a settlement Order was entered by the U.S. District Court of Oregon. The judgment and order noted that the

Secretary of the Army and the Secretary of the Interior agreed to propose legislation providing for the acquisition and improvement of additional sites. The agreement of the two Departments to propose this legislation was the key to attaining the tribes' consent in the court order and project. Legislation was forwarded to the Congress in 1974, but no action was taken by the Congress at that time, and no legislation has been forwarded since that time.

Presently, all five existing in-lieu sites are within the Bonneville Pool, the demography of which forces access to these sites and those upriver in the John Day, Dalles, and McNary Pools through private lands and public parks, increasing tensions between the Indians and the general public and taxing public park facilities which are not equipped for Indian treaty fishing activities. Highways, railroads, and fences further hinder access. Also, a phenomenal recent influx of windsurfing or boardsailing in the Columbia Gorge has increased overcrowding and tensions. Finally, facilities at the existing in-lieu sites are in dire need of repair.

Title IV of H.R. 2677 provides a vehicle for the United States to satisfy its commitment to the Indian tribes which exercise fishing rights on the Columbia River and whose traditional fishing places were inundated by flooding caused from the construction of the Bonneville Dam. The provision designates certain sites and authorizes the acquisition of additional sites from willing sellers to allow more and better access to the river for Indian and non-Indian fishermen, to ease tensions between the Indian and non-Indian fishermen and to ease overcrowding of access sites by fishermen and recreationists along the Columbia River. A letter from Senators Hatfield and Evans to the U.S. Army Corps of Engineers dated August 3, 1988 and the reply from the Corps dated September 6, 1988 follow:

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC, August 3, 1988.

Major General HATCH,
Department of the Army,
U.S. Army Corps of Engineers, Washington, DC.

DEAR MAJOR GENERAL HATCH: As you may be aware, on April 19th the Senate Select Committee on Indian Affairs held oversight hearings on the management of Indian fisheries on the Columbia River. At the hearing the Committee learned of the United States' unfulfilled obligation to provide fishing sites along the Columbia River in lieu of sites inundated by construction of the Bonneville Dam. In his testimony before the Committee, Morgan R. Rees, Deputy for Policy, Planning and Legislative Affairs, informed us that the Corps would work to identify additional fishing sites and, within its existing authority, to make additional sites available for Indian fishermen.

Our offices have since been in contact with the Corps' district office in Portland, Oregon to develop plans for transferring additional in-lieu sites to the Bureau of Indian Affairs as soon as possible. The district office accommodated members of our staffs on a recent visit to the Northwest concerning the in-lieu fishing sites. We wish to commend the Corps for recognizing a continuing obliga-

tion on the part of the United States to the treaty fishermen, a position which we believe has a strong moral and legal basis.

We understand that the Corps has authority to transfer sites that the Corps now owns administratively to the Department of Interior. Such a transfer normally requires an Environmental Assessment but not an Environmental Impact Statement. Furthermore, we understand that, an exchange of lands necessary for project purposes such as this may be entirely exempt from the EA and EIS requirements. At the very least, because all the sites are currently used as fishing sites by the treaty fishermen, the transfer should constitute no significant change in land use or environmental impact.

The Portland District Office has undertaken a map study and title searches to clarify the legal descriptions of the sites so that all interested parties are treated fairly. It is also our understanding that should an EA be necessary, a first set of sites will be consolidated into one EA to expedite their transfer.

We are most anxious for the Corps to effectuate the transfer of sites before further tension and overcrowding causes irreparable harm to the many parties with an interest along the Columbia. Please inform us of progress since the Indian Affairs Committee hearing on the Corps' administrative transfer of the agreed upon sites.

Also, please send us periodic updates and copies of any reports being developed in conjunction with this project. We will greatly appreciate the Corps' continued diligent and cooperative efforts in bringing this project to fruition.

Sincerely,

MARK O. HATFIELD,
U.S. Senator.

DANIEL J. EVANS,
U.S. Senator.

DEPARTMENT OF THE ARMY,
U.S. ARMY CORPS OF ENGINEERS,
Washington, DC, September 6, 1988.

Hon. DANIEL J. EVANS,
U.S. Senate,
Washington, DC.

DEAR SENATOR EVANS: This is in response to your letter of August 3, 1988, to Lieutenant General Hatch expressing interest in the designation of additional in-lieu fishing sites on the Columbia River in Oregon and Washington. General Hatch has asked me to respond on his behalf. The Army Corps of Engineers is aware of the request of the Umatilla, Yakima, Warm Springs, and Nez Perce' tribes for additional in-lieu fishing sites. We share your concern for overcrowding which results from limited access to the lands and waters of the Columbia River and increased use of the river by both Indian fishermen and the general public.

We respectfully offer the following points of clarification regarding any continuing legal obligation of the Corps of Engineers to provide additional in-lieu fishing sites, and our authority to directly transfer projejct land to the Department of the Interior (DOI).

As presented by Mr. Morgan R. Rees, Deputy for Policy, Planning and Legislative Affairs, Office of the Assistant Secretary of the Army (Civil Works) in his testimony before the Senate Select Committee on Indian Affairs, any legal obligation of the Corps of Engineers to acquire in-lieu fishing sites under authority of the 1945 Rivers and Harbors Act was fulfilled with the acquisition of the in-lieu fishing sites on the Bonneville pool. Technically the Corps of Engineers has met its legal obligations to provide in-lieu fishing sites. However, we are aware that there is a continuing interest to designate additional in-lieu fishing sites.

In regard to the concept of administrative transfer of Federal project lands, the authority to directly transfer project lands to the Department of the Interior is very limited as is fully described in the following paragraph. This point was raised in meetings and conferences over the last two months with Columbia River Inter Tribal Fish Commission (CRITFC), Bureau of Indian Affairs (BIA), Tribes, and members of your staff. A direct transfer of project lands for in-lieu fishing site purposes would require Congressional authorization.

We have the potential of dealing with three categories of lands for in-lieu fishing sites: Federally owned lands excess to project needs (should such be identified), and non-Federal lands which would need to be acquired. Lands needed for authorized project purposes cannot be excessed and therefore cannot be transferred to the Department of the Interior (DOI) absent Congressional authorization. If lands excess to project needs are former Indian lands, as defined by statute, then the Corps, in accordance with GSA procedures, could transfer these excess lands to DOI. If the lands are excess but not former Indian lands, then the land would be reported to GSA which could in turn transfer it to DOI. Some proposed sites may require the acquisition of additional land, an action for which we have no authority and would need legislation.

In response to your question of our progress since the April 19, 1988, Subcommittee Hearing, the Portland District has coordinated with CRITFC, BIA and appropriate Indian tribes, and is accelerating the master plans for the mid Columbia River projects (Bonneville, The Dalles, and John Day) to identify possible in-lieu fishing sites. The Master Plan is the basic document guiding Corps of Engineers responsibility pursuant to Federal laws to preserve, conserve, restore, maintain, manage, and develop the project lands, water, and associated resources.

The master planning will begin in Fiscal Year 1989. Tasks will include detailed scoping, resource inventory, land use analysis, agency and public involvement, and land use designation for Corps managed lands along the Columbia River. Potential in-lieu fishing sites will be evaluated in this context. The results could serve as the basis for any legislative proposal for transfer of land. The master planning process includes public participation which weighs competing requirements for the limited resources. As with National Environmental Policy Act (NEPA) documentation, public participation is an integral part of master planning.

While there is no legal requirement for NEPA documentation in the master planning process, the issues raised may require some form of NEPA compliance documentation. Although the transfer of

land to other Federal agencies is categorically excluded from NEPA documentation, 33 CFR Part 230.9 goes on to say that a district commander should be alert for extraordinary circumstances which may dictate the need to prepare an EA or EIS. Such circumstances may exist in that the District has already received comments from other members of the public. This would certainly seem to require that the public be given a chance to participate in our master planning process. Public involvement is a critical element of master planning which the public has come to expect. Part 230.9 also states that categorical exclusion does not exempt the action from compliance with any other Federal law.

On July 7 1988, Portland District staff met with Mr. Richard Monet of your staff, and toured existing and potential in-lieu fishing sites. On July 25, 1988, Portland District staff met with staff of CRITFC, BIA representatives of the Tribes, and Ms. Susan Long of Senator Hatfield's staff. At that meeting, Portland District staff, in further explanation of prior testimony, restated that a master plan study would be required prior to identification of any additional new in-lieu fishing sites on the Corps of Engineers project lands. On August 5 and 10, 1988, the District staff met with staff of the CRITFC and representatives of Tribes to more definitively describe the thirty sites proposed in the CRITFC report and to map them.

Any recommendations will be based on regional needs, agency and public involvement, and resource suitability. We recognize that this process does not provide for immediate transfer of lands to the DOI. However, it will assure that all potential sites are considered and evaluated in a context of regional needs, agency, and public desires and within all federal laws, regulations, and policies. The Indian Tribes will be asked to best serve all regional interests and will provide for the optimum use of the limited public lands and waters of the Columbia River.

We will continue to inform you of our progress. Thank you for your interest in the Corps of Engineers and the Columbia River Basin.

Sincerely,

PATRICK J. KELLY,
Brigadier General, U.S. Army, Director of Civil Works.

LEGISLATIVE HISTORY

H.R. 2677 was introduced June 11, 1987 by Representative Rhodes of Arizona. The House Interior and Insular Affairs Committee held a hearing on the measure on September 29, 1987 and it passed the House on December 7, 1987. The bill was referred to the Select Committee on Indian Affairs on December 8, 1987.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on September 21, 1988, by unanimous vote and with a quorum present, recommends that the Senate pass H.R. 2677, with an amendment in the nature of a substitute.

(4) A final order has been entered in the civil action entitled *John Benedict Renville* v. *Blackfeet Tribe of Indians, et al.*, No. CV-84-41-6F, in the United States District Court for the District of Montana dismissing with prejudice all claims, cross-claims, counterclaims, third-party claims, and all other claims arising out of such civil action.

(d) This subsection provides that the land acquired in trust by the Secretary under the Act shall be subject to the laws that would apply if the sale of October 28, 1946, had not taken place.

(e) This subsection provides that the amounts paid under subsection (a) of this Act are tax exempt pursuant to section 7 of the Act of October 19, 1973 (87 Stat. 468; 25 U.S.C. 1407).

(f) This subsection provides that the amounts paid under subsection (a) of this Act to Mary Lois Peterson Munoz shall be considered as funds for condemnation proceedings as provided for in Section 1033 of the Internal Revenue Code.

(g) This subsection limits the amount of attorney fees to be paid for services rendered John Benedict Renville in connection with any claim described in this bill to 10 percent of any amounts paid John Benedict Renville under subsection (a) of the Act, including the value of the land returned, such attorney fees to be paid from the funds awarded Renville under this Act.

(h) This subsection directs the Secretary of the Interior to have made an appraisal of the value of the lands described in subsection (b) as of the date of enactment of this Act. The subsection further provides that the sums paid to the Blackfeet Tribe and Mary Lois Peterson Munoz under subsection (a) of the Act shall not exceed such appraisal values, plus a reasonable attorney's fee, not to exceed 10 percent of such award, any contract to the contrary now withstanding.

TITLE IV—COLUMBIA RIVER TREATY FISHING ACCESS SITES

Section 401(a) provides for the immediate administration of several sites by the Federal agency owning them for the use of treaty fishing by members of the named Indian entities. The maps to which the Act refers have been prepared by the Army Corps of Engineers, at the request of the Committee, in conjunction with the named Indian tribes. It is the intent of the Committee that the lands be managed by the Federal agency currently holding them for the purpose of access to fishing sites, and that improvements to the sites be made, from the time of the passage of the legislation. In the event that privately owned lands appear to be represented as sites on the numbered maps, only Federally owned lands are subject to this subsection.

Section 401(b)(1) requires the Secretary of the Army to identify any and all lands for sale adjacent to the Bonneville Pool and to acquire at least six sites adjacent to the Bonneville Pool to be provided as in-lieu sites before any equitable satisfaction is attained for the United States' commitment to provide in-lieu sites in the Bonneville Pool. It is understood, of course, that the Secretary of the Army will consult with the named Indian entities before acquiring any lands under this subsection.

Paragraph (2) of subsection (b) requires the Secretary of the Army to improve as defined the lands under subsection (a) and lands acquired under Paragraph (1) of subsection (b) at least to the level provided the existing in-lieu sites and to the standards of improvements provided in the National Park System for modern camping facilities. The Committee also expects that facilities will be constructed and maintained in a manner consistent with the Columbia River Gorge Commission Scenic Area Management Plan if the sites are located within the external boundaries of the Columbia River Gorge National Scenic Area established pursuant to Public Law 99-663. This section also provides that the Federal agency currently owning the lands may negotiate an agreement concerning operation and maintenance costs with the Department of the Interior to transfer the sites, after improvements have been made, to the Department of the Interior for maintenance and management purposes.

Paragraph (3) of subsection (b) requires the Secretary of the Army to make certain improvements at two named sites.

Section 401(c) requires the United States to treat the costs of implementing Paragraphs (2) and (3) of subsection (b) as project costs of the Columbia River projects and to allocate those costs to the respective purposes of those projects in accordance with existing law applicable to allocation of project costs.

Section 401(d) authorizes up to $2 million to implement the purposes of (b)(1) of this title.

Section 401(e) grants the Secretary of the Interior the right of first refusal to accept any lands that any Federal agency of the United States makes available, provided that the total acreage of lands provided as in-lieu sites under subsections (a), (b), and (e) not exceed 360 acres, so that the total acres of in-lieu sites in the Bonneville Pool, including existing sites, not exceed 400 acres.

The Committee understands that the Corps of Engineers is currently undergoing a master planning process and that as a result of that process, some of the lands that the Corps now owns may be determined to be no longer needed for project purposes. Other Federal agencies often take similar planning exercises. If, after consultation with the named tribes, the Secretary of the Interior determines that any lands that would be declared excess would be suitable for fishing sites, he should take the necessary steps to inform the agency and the lands should be designated as new in-lieu sites and immediately managed by that agency as fishing sites for the named tribes, improved by the Department of the Army, and transferred to and maintained by the Department of the Interior.

Section 401(f) provides that nothing in this Section shall affect any claims the named tribes or any other tribes may have concerning the Dalles, John Day, McNary Dams or any other projects on the Columbia River except the Bonneville as provided for in subsection (e). This subsection also provides that this Section does not affect the legal status of the existing in-lieu sites and further assumes that the legal status of the newly provided in-lieu sites will be entirely consistent with those of existing sites.

As for the proposed payment to Mrs. Munoz, it would appear very unlikely that as a third party she has any cause of action against the United States. Moreover, the government would have defenses on the merits to such a claim.

Therefore, the Department opposes the passage of the draft substitute for S. 802. The Office of Management and Budget has advised this Department that there is no objectin to the submission of this report from the standpoint of the Administration's program.

Sincerely,

THOMAS M. BOYD,
Acting Assistant Attorney General.

STATEMENT BY MORGAN R. REES, DEPUTY FOR POLICY, PLANNING AND LEGISLATIVE AFFAIRS, OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

Mr. Chairman and members of the committee, my name is Morgan Rees. I am Deputy for Policy, Planning, and Legislative Affairs in the Office of the Assistant Secretary of the Army (Civil Works). Accompanying me today are Mr. Bernie Bishop, Chief of Master Planning/Cultural Resources Section from the Corps Portland District and Mr. Charles Flachbarth, our attorney from the Corps Office of Counsel in Washington. Assistant Secretary Page regrets that he cannot appear before you today to discuss the important issue of Indian fishing rights on the Columbia River.

We are here to discuss the status of the law, pertinent agreements and actions taken with respect to the provision of Federal lands along the shoreline of the Columbia river for the use of the Yakima, Umatilla, Warm Springs, and Nez Perce Tribes as in-lieu fishing sites in compensation for historically used sites which were inundated by reservoirs constructed by the Federal government.

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BACKGROUND

In 1855 these Tribes first entered into treaties which were ratified in 1859. Under these treaties, the tribes ceded to the Federal Government all Indian title to the lands other than the reservations that they currently occupy in the Columbia River Basin and reserved for themselves the right to fish the banks of the lower Columbia River.

Since the treaties were approved, the Federal government through the United States Army Corps of Engineers has constructed four multi-purpose dams on the mainstem of the lower Columbia River in Oregon and Washington. These four are in addition to ten other dams on tributary waterways in Oregon, Idaho, and Washington as well as four dams on the lower Snake River in Washington. The four dams on the Columbia River mainstem serve to generate 6,040 MW of hydroelectric power and provide navigation facilities to carry approximately 6.4 millon tons of cargo annually. These dams also provided nearly 4.5 million recreation user days in 1986 alone. The Department of the Interior and other private and public utility districts have also constructed numerous

power generating projects on the main stem of the Columbia and Snake Rivers and other tributary streams.

STATUS OF AGREEMENTS AND LAWS

There are two agreements, one reached in 1939 and another in settlement of a lawsuit in 1972 which affect the provisions of in-lieu sites. In addition, the 1945 River and Harbor Act authorized acquisition of unspecified sites and facilities.

THE 1939 AGREEMENT

The first of the major projects constructed on the lower Columbia was the Bonneville Dam, constructed in the mid-1930's. The construction of the Bonneville Dam resulted in the inundation of 37 usual and accustomed Indian fishing places on the mainstem of the Columbia River between Bonneville Dam and The Dalles. An agreement was negotiated with the Indian tribes for inundation of their accustomed fishing sites in 1939 and approved in 1940 by the Secretary of War. The agreement called for the Government to acquire more than 400 acres of land at six described sites to serve as "in-lieu" fishing sites. The Corps was to make certain improvements thereon, and thereafter turn the sites over to the Department of the Interior, Bureau of Indian Affairs, to be administered for the permanent use and enjoyment of the Indian tribes.

Section 2 of the 1945 River and Harbor Act was the Congressional implementation of the "agreement" between the Government Officials and the Tribes. Congress authorized the Secretary of War ". . . to acquire lands and provide facilities. . . . to replace Indian fishing grounds submerged or destroyed as a result of the construction of Bonneville Dam. . .". Funds not to exceed $50,000 were authorized to be expended for this purpose. This amount proved inadequate for acquisition, and was subsequently raised by Congress in 1955 to $185,000. However, the Act did not specify the number, location, or size of the sites to be acquired.

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Because of disagreements among the various parties to the agreement of 1939, not all the sites outlined in the agreement were acquired and some sites were substituted. In all, five tracts, totalling 40 acres, were purchased for the use and benefit of the Indians. The decisions concerning acquisition of the sixth site and disposition of the balance of the funds for improvement of the sites authorized by the 1945 River and Harbor Act were approved by the Umatilla, Warm Springs, and Yakima governing bodies. In acquiring 5 sites, and expending the total amount of funds appropriated by Congress, the Corps is not permitted by law to acquire any additional in-lieu sites. However, as will be discussed later, there are administrative options which could be used to establish in-lieu fishing sites on Federal land.

THE 1972 AGREEMENT

Based on the original authorization for construction of Bonneville Dam, in the late 1960s and early 1970s the Bonneville Power Administration and the Corps of Engineers began studies to en-

large the capacity of the existing Bonneville power-generating capability. This was accomplished by raising the water levels behind the dam to generate additional power at peak loads to help meet the Pacific Northwest Power requirements. This proposal was the subject of a lawsuit, *Confederated Tribes of the Umatilla Indian Reservation* v. *Callaway* in the United States District Court in Oregon. At issue was the effect of the change in the levels of the Bonneville pool on certain of the in-lieu sites, and on the migration of salmonoid fish.

A settlement to the *Confederated Tribes of the Umatilla Indian Reservation* v. *Callaway* lawsuit was reached in 1972 between the Executive Branch of the Federal Government and the Indian tribes. The Executive Branch agreed to try to obtain additional authority from Congress to acquire additional in-lieu sites for the tribes for fishing sites lost in the Bonneville, the Dalles, and John Day Pools, and to improve the facilities at the existing in-lieu sites in the Bonneville Pool. It should be noted that the original authorization in 1945 was limited to the Bonneville pool.

The District Court Decision on the Confederated Tribes case filed in 1973 based on these negotiations recognized that the Federal Agencies had no authority to acquire additional in-lieu sites. The Decision noted that the agencies were recommending to OMB legislation for the acquisition of additional in-lieu fishing sites in the lower Columbia River and for construction of improvement on the existing sites. Such facilities would include access roads, boat ramps, sanitary fish cleaning, curing, and other ancillary facilities with electrical service and landscaping.

In order to fulfill the settlement which was negotiated in 1972, the Corps had constructed the additional improvements to the in-lieu sites. In addition, proposed legislation was submitted to Congress in 1974 under the signature of Secretary of the Army, Howard H. Callaway, to authorize the Secretary of the Army to acquire additional in-lieu sites at Bonneville, The Dalles, and John Day Dams. Such legislation, however, was never enacted. Therefore, we continue to have no authority to acquire additional sites.

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The Corps of Engineers has continued to meet with the Bureau of Indian Affairs to discuss the activities and uses of Federal lands for Indian fishing in the lower Columbia River and the impact of fishing on other uses made of the Columbia River waterway. The Bureau of Indian Affairs approached the Corps of Engineers in the past several months to discuss the feasibility of acquiring and/or designating additional fishing sites in the lower Columbia River Basin from Bonneville Pool to McNary Dam in support of Indian fisheries.

The Bureau has identified a number of locations for additional in-lieu fishing sites. The Corps is preparing a Columbia River Regional Overview of the Bonneville, the Dalles, and John Day projects which will address, among other items, the issues involving existing Indian fishing sites and the need to identify other potential future sites. These studies should indicate whether additional sites for tribal fishing are feasible taking into consideration recreational and navigation use of the Columbia River system.

The Secretary of the Army has no enforcement authority under the Lacey Act. Thus, we will defer to the representatives of the Department of Justice in discussing the restrictions placed on fishing in the Columbia River under the Lacey Act and the terms of the Settlement Agreement under the case of *United States* v. *Oregon.* However, to the extent that fishermen attempt to find access to the river through Federal project lands not available for that purpose or to impose their activities in the Federal recreation areas contrary to the rules and regulations established for the use of such areas, they are subject to citation by the Corps of Engineers for violations of Title 36, Code of Federal Regulations regulating the use and enjoyment of the Federal park and recreation areas. Although the Secretary of the Army has no law enforcement capability, per se, any violations of state or Federal law must be referred to local or state law enforcement agents.

In summary the Corps exhausted all authority to acquire in-lieu sites under the 1945 River and Harbor Act, as amended and has no authority to acquire additional sites at this time. We do, however, have expertise which could be used in conjunction with existing authorities to identify such sites and would be happy to work with the Committee and the Department of the Interior in order to protect tribal fishing rights. This concludes my statement and I would be glad to answer any questions you may have.

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SOURCE: Corps of Engineers (January 1989)
Mid Columbia River Projects - Master Plan for Resource Use

TABLE 1. HR 2677 SITES

No.	Site	Name	Location	R.M.	Real Estate	Use	Approx. Acres	NSA
BONNEVILLE LOCK AND DAM POOL AREA								
1.	2677-1.	Bonneville Area Office	Skamania/ Washington	147	FEE	Admin	7.8	Urban
2.	2677-2	North Dalles	Klickitat/ Washington	189-190	FLO	Other	2.0	Urban
THE DALLES LOCK AND DAM POOL AREA								
3.	2677-3	Avery	Klickitat/ Washington	197-198	FEE	Park	1.8	Gen.
4.	2677-3.	Celilo	Wasco/Oregon	201-202	FEE	Park	11.1	Gen.
5.	2677-4	Maryhill	Klickitat/ Washington	208	FLO	Other	8.2	Gen.
6.	2677-4.	Rufus	Sherman/ Oregon	212-213	FEE	Other	2.2	N/A
7.	2677-5.	Preachers Eddy	Sherman/ Oregon	213-214	FEE	Park	3.6	N/A
8.	2677-5.	Cliffs	Klickitat/ Washington	214-215	FEE	Park	8.6	N/A
JOHN DAY POOL AREA								
9.	2677-6.	North Shore	Klickitat/ Washington	216-217	FEE	Park	7.5	N/A
10.	2677-6.	Le Page	Sherman/ Oregon	218	FEE	Park	2.8	N/A
11.	2677-7.	Goodnoe	Klickitat/ Washington	225-226	FEE	Other	2.7	N/A
12.	2677-7.	Pasture Point	Klickitat/ Washington	226	FEE	Other	12.0	N/A
13.	2677-7.	Rock Creek	Klickitat/ Washington	228	FEE (Public Domain Withdrawn)	Other	5.7	N/A

No.	Site	Name	Location	R.M.	Real Estate	Use	Approx. Acres	NSA
14.	2677-8.	Sundale	Klickitat/ Washington	236	FEE	Park	6.5	N/A
15.	2677-9.	Roosevelt	Klickitat/ Washington	240-241	FEE	Park	3.3	N/A
16.	2677-10.	Moonay	Klickitat/ Washington	247-248	FEE	Other	10.3	N/A
17.	2677-10.	Pine Creek	Klickitat/ Washington	249-250	FEE	Other	4.6	N/A
18.	2677-11.	Threemile Canyon	Morrow/ Oregon	255-256	FEE	Other	5.7	N/A
19.	2677-11.	Alderdale	Klickitat/ Washington	257-258	FEE (Public Domain Withdrawn)	Other	10.6	N/A
20.	2677-11.	Alder Creek	Klickitat/ Washington	257-258	FEE (Public Domain Withdrawn)	Other	5.7	N/A
21.	2677-12.	Crow Butte	Benton/ Washington	261-262	FEE	Park	28.1	N/A
22.	2677-12.	Faler Road	Morrow/ Oregon	268-269	FEE	Park	8.4	N/A
23.	2677-12.	Boardman	Morrow/ Oregon	269	FEE	Park	4.6	N/A

KEY: FLO - Flowage Easement
FEE - Federal Fee Title

R.M. - River Mile
NSA - National Scenic Area:
Urban - Urban Area
Gen. - General Management Area
N/A - Not applicable

APPENDIX B

TITLE IV—COLUMBIA RIVER TREATY FISHING ACCESS SITES

Public lands.

SEC. 401. (a) All Federal lands within the area described on maps numbered HR2677 sheets 1 through 12, dated September 21, 1988, and on file in the offices of the Secretary of the Interior, the Secretary of the Army and the Columbia River Gorge Commission shall, on and after the date of enactment of this Act, be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce Tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Indian Nation.

(b) Notwithstanding any other provision of law, the Secretary of the Army shall—

(1) identify and acquire additional lands adjacent to the Bonneville Pool from willing sellers until such time that at least six sites have been acquired adjacent to the Bonneville Pool for the purpose of providing access and ancillary fishing facilities for the members of the Indian tribes referred to in subsection (a); and

Conservation.

(2) improve the lands referred to in subsections (a) and paragraph (1) of subsection (b) and maintain such lands until such time as the lands are transferred to the Department of the Interior for the purpose of maintaining the sites. Such improvements shall include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park System; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; electrical and sewage facilities; and landscaping; and

Recreation.

Washington.
Oregon.
Conservation.
Recreation.

(3) make improvements at existing sites, including but not limited to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site at Cascade Locks, Oregon.

(c) The Secretary of the Army shall treat the costs of implementation of paragraphs (2) and (3) of subsection (b) as project costs of the Army Corps of Engineers Columbia River projects, and such costs shall be allocated in accordance with existing principles of allocating Columbia River project costs. Funds heretofore and hereafter appropriated to the Secretary of the Army for maintenance and development of Columbia River projects may be used to defray the costs of accomplishing the purposes of this Act.

Appropriation authorization.

(d) There is hereby authorized to be appropriated a sum not to exceed $2,000,000 to implement the purposes of subsection (b)(1).

(e) The Secretary of the Interior shall be vested with the right of first refusal, after consultation with the Indian entities in subsection (a), to acccept any lands adjacent to the Columbia River within the Bonneville, Dalles, and John Day Pools now owned or subsequently acquired by any Federal agency and declared to be excess lands or otherwise offered for sale or lease by such Federal agency, and upon such acceptance, such Federal agency shall transfer such lands to the Secretary for the purpose of Indian treaty fishing: *Provided however,* That total acreage of sites provided under this section adjacent to the Bonneville Pool of the Columbia River not exceed three hundred and sixty acres.

(f) Nothing in this Act shall be construed as repealing, superseding, or modifying any right, privilege, or immunity granted, re-

served, or established pursuant to treaty, statute, or Executive order pertaining to any Indian tribe, band, or community.

TITLE V—POTAWATOMI JUDGMENT FUNDS

SEC. 501. That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropropriated in satisfaction of the judgment awarded to the Wisconsin Band of Potawatomi in docket 28 of the United States Claims Court (including all interests and investment income accrued thereon) shall be used and distributed as provided in this title.

SEC. 502. (a) The funds appropriated with respect to the judgment awarded the Wisconsin Band of Potawatomi in docket 28 of the United States Claims Court (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, are allocated as follows:

(1) $^{141}/_{451}$ of such funds are allocated to the Hannahville Indian Community, and

(2) $^{310}/_{451}$ of such funds shall be allocated to the Forest County Potawatomi.

(b)(1) The funds allocated to each Indian tribe under subsection (a), and any interest and investment income accrued on such funds, are hereby declared to be held in trust by the United States for the benefit of such Indian tribe and shall be invested by the Secretary of the Interior for the benefit of such Indian tribe. Securities.

(2) The funds held in trust by the United States under paragraph (1) for the benefit of an Indian tribe shall be available to the governing body of such Indian tribe, on a budgetary basis and subject to the approval of the Secretary of the Interior, for tribal, social, and economic development programs for such Indian tribe.

SEC. 503. None of the funds held in trust by the United States under this title (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds made available under this title for programs or for distributions under any programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which any household or individual would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program. Taxes.

TITLE VI—POTAWATOMI TRUST LANDS

SEC. 601. (a) All rights, title and interests of the United States in the surface and mineral estate of approximately 11,300 acres of land located in Forest County and Oconto County, Wisconsin, that was acquired by the United States by reason of section 24 of the Act of June 30, 1913 (38 Stat. 102), including any improvements on such land, are hereby declared to be held by the United States in trust for the benefit and use of the Forest County Potawatomi Community of Wisconsin and such land is hereby declared to be the reservation of the Forest County Potawatomi Community of Wisconsin. Wisconsin.

(b) All rights, title, and interests of the United States in the surface and mineral estates of approximately 3,359 acres of land Michigan.

APPENDIX C

including design of "fish-friendly" turbines, for use on the Columbia River hydrosystem.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $12,000,000 to carry out this subsection.

(c) IMPLEMENTATION.—Nothing in this section affects the authority of the Secretary to implement the results of the research and development carried out under this section or any other law.

SEC. 512. COLUMBIA RIVER TREATY FISHING ACCESS.

Section 401(a) of the Act entitled "An Act to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987)", approved November 1, 1988 (102 Stat. 2944), is amended—

(1) by striking "(a) All Federal" and all that follows through "Columbia River Gorge Commission" and inserting the following:

"(a) EXISTING FEDERAL LANDS.—

"(1) IN GENERAL.—All Federal lands that are included within the 20 recommended treaty fishing access sites set forth in the publication of the Corps of Engineers entitled 'Columbia River Treaty Fishing Access Sites Post Authorization Change Report', dated April 1995,"; and

(2) by adding at the end the following:

"(2) BOUNDARY ADJUSTMENTS.—The Secretary of the Army, in consultation with affected tribes, may make such minor boundary adjustments to the lands referred to in paragraph (1) as the Secretary determines are necessary to carry out this title.".

33 USC 1293a note.

SEC. 513. GREAT LAKES CONFINED DISPOSAL FACILITIES.

(a) ASSESSMENT.—Pursuant to the responsibilities of the Secretary under section 123 of the River and Harbor Act of 1970 (33 U.S.C. 1293a), the Secretary shall conduct an assessment of the general conditions of confined disposal facilities in the Great Lakes.

(b) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the assessment conducted under subsection (a), including the following:

(1) A description of the cumulative effects of confined disposal facilities in the Great Lakes.

(2) Recommendations for specific remediation actions for each confined disposal facility in the Great Lakes.

(3) An evaluation of, and recommendations for, confined disposal facility management practices and technologies to conserve capacity at such facilities and to minimize adverse environmental effects at such facilities throughout the Great Lakes system.

SEC. 514. GREAT LAKES DREDGED MATERIAL TESTING AND EVALUATION MANUAL.

The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, shall provide technical assistance to non-Federal interests on testing procedures contained in the Great Lakes Dredged Material Testing and Evaluation Manual developed pursuant to section 230.2(c) of title 40, Code of Federal Regulations.

APPENDIX D

INDIANS—CRIMINAL OFFENSES AND CIVIL CAUSES—STATE JURISDICTION

See Legislative History, p. 2409

CHAPTER 505—PUBLIC LAW 280

[H. R. 1063]

An Act to confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title [44] the following new item:

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

Sec. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162,[45] as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or

44. 18 U.S.C.A. prec. § 1151.
45. 18 U.S.C.A. § 1162.

any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

Sec. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title[46] the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

Sec. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360,[47] as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any

46. 28 U.S.C.A. prec. § 1331.
47. 28 U.S.C.A. § 1360.

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applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

Sec. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed,[48] but such repeal shall not affect any proceedings heretofore instituted under that section.

Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved August 15, 1953.

INDIANS—PERSONAL PROPERTY—PURCHASE AND SALE

See Legislative History, p. 2414

CHAPTER 506—PUBLIC LAW 281

[H. R. 3499]

An Act to terminate certain Federal restrictions upon Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Sections 467 and 2136 of the Revised Statutes (25 U.S.C., sec. 266)[49] and section 2135 of the Revised Statutes (25 U.S.C., sec. 265),[50] all of the said laws being laws which forbid the sale, purchase, or possession by Indians of personal property which may be sold, purchased, or possessed by non-Indians, are hereby repealed.

Sec. 2. (a) Section 1157 of title 18 of the United States Code, as amended,[51] is further amended by striking the period at the end thereof and adding the following: ": *Provided*, That this section shall apply only to livestock purchased by or for Indians with funds provided from the revolving loan fund established pursuant to the Acts of June 18, 1934 (48 Stat. 984), and June 26, 1936 (49 Stat. 1967), as amended and supplemented, or from tribal loan funds used under regulations of the Secretary of the Interior, and to livestock issued to Indians as loans repayable 'in kind', and to the increase of

48. U.S.Code Cong.Service 1949, p. 722.
49. 25 U.S.C.A. § 266.
50. 25 U.S.C.A. § 265.
51. 18 U.S.C.A. § 1157.